

REMARKS

By this amendment, claims 1-8, 10-17, and 19-27 are pending, in which no claims are canceled, withdrawn, currently amended, or newly presented.

The final Office Action mailed June 17, 2004 rejected claims 1-7, 10-16, 19-22 and 24-27 as obvious under 35 U.S.C. § 103 based on *Wang et al.* (US 6,636,505) in view of *Gidwani* (US 6,640,239).

As an initial matter, Applicants note that the statement of the obviousness rejection (on page 2 of the Office Action) over *Wang et al.* and *Gidwani* appears to omit dependent claims 8, 17, and 23. This omission is inconsistent with the Office Action's later description of such rejection on page 4. Therefore, Applicants assume the Examiner intends these claims 8, 17, and 23 to be rejected over *Wang et al.* in view of *Gidwani*.

The Specification is amended to correct discovered informalities.

Applicants respectfully traverse the obviousness rejection because *Wang et al.* and *Gidwani*, a single or in combination, do not teach or otherwise suggest the claim features.

Independent claim 1 and 19 recite “executing a communication software on a plurality of end user stations that communicate over a local area network (LAN) supporting an Ethernet-based LAN protocol” and “wherein individual accounting information is processed for each of the plurality of end user station.” Claim 10 recites “a plurality of end user stations connected to the LAN, each of the plurality of end user stations executing a communication software” and “wherein the remote access server processes individual accounting information for each of the plurality of end user stations.” Claim 24 recites “receiving packets supporting a plurality of point-to-point communication sessions initiated respectively by a plurality of hosts, the packets being encapsulated by an Ethernet-type protocol” and “wherein individual accounting information is processed for each of the plurality of

hosts.” Claim 26 recites “**receiving encapsulated packets from a single customer premise equipment that communicates with a plurality of hosts**” and “**wherein individual accounting information is processed for each of the plurality of hosts.**”

The Office Action (on page 3) correctly acknowledges that *Wang et al.* does not disclose the above features, and thus, is forced to rely on *Gidwani* for such a supposed teaching. The Office Action explains that *Gidwani* discloses “an Internet backbone connectivity which provides capability for subscribers to communicate with each other accross [sic] the backbone comprising a SS7 gateway 146 that is used for billing as well as switching capability.” Applicants do not dispute the fact that *Gidwani* discloses such a billing capability; however, this capability is starkly different from the claim features when examined in the proper context.

Specifically, after carefully studying the cited passages (col. 20, lines 35-47, col. 61, lines 45 – col. 62, line 20 and Figures 25a and 25b) proffered by the Office Action, Applicants recognize that the “billing capability” disclosed in *Gidwani* system (col. 20: 34) is a conventional one tied to billing of different subscribers. The billing arrangement of *Gidwani* resembles the scenario of FIG. 6A in Applicants’ Specification, whereby the different sites A, B, and C correspond to different subscribers.

By contrast, the claims recite “**a plurality of end user stations that communicate over a local area network (LAN) supporting an Ethernet-based LAN protocol**” and “**wherein individual accounting information is processed for each of the plurality of end user station.**” In one embodiment, the claimed invention, as shown in FIG. 1, provides a single site with multiple end user stations. Based on the disclosure of *Gidwani*, this configuration, as a single site, would constitute a single subscriber.

Applicants recognize the problems associated with traditional billing capability for multiple users connecting to a LAN. For example, the Specification (page 12, ¶ 2) discloses the following:

A key difference between the PPP dial-up solution and the present invention is the fact that the user can select a desired service from a variety of services. PPPoE as utilized in communication system 100 provides end users access to multiple network services as is possible with a conventional dial-up approach. This capability is referred to as dynamic service selection, which **enables these end users to change destination networks on demand**. Further, **multiple sessions can be established with different networks simultaneously over a single DSL connection 125**. In contrast to the traditional approach, in which the ISP detects the LAN 109 as a single user, this arrangement advantageously allows **individual accounting information to be maintained with respect to each of the end user stations**.

The *Gidwani* system does not operate to support billing in the manner claimed, but instead discloses in general terms a traditional billing arrangement of subscribers. Therefore, a *prima facie* of obviousness thus has not been established. To establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art.

In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Further, it is well settled that it is impermissible simply to engage in hindsight reconstruction of the claimed invention, using Applicants' structure as a template and selecting elements from the references to fill the gaps. *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). In this instance, the Office Action has attempted to modify the system of *Wang et al.* to accommodate the general billing system of *Gidwani*, without any suggestion by either of these references. Recognizing, after the fact, that a modification of the prior art would provide an improvement or advantage, without suggestion thereof by the prior art, rather than dictating a conclusion of obviousness, is an indication of improper application of hindsight considerations. Simplicity and hindsight are not proper criteria for resolving obviousness. *In re Warner*, 397 F.2d 1011, 154 USPQ 173 (CCPA 1967).

Therefore, Applicants respectfully request withdrawal of the obviousness rejection over the combination of *Wang et al.* and *Gidwani*, and request indication that independent claims 1, 10, 19, 24 and 26 are allowable.

Dependent claims 2-8, 11-17, 20-23, 25 and 27 are allowable for at least the same reasons as their corresponding independent claims 1, 10, 19, 24 and 26 and are separately patentable on their own merits. For example, with regard to the obviousness rejection of dependent claims 8, 17 and 23, the Office Action (on page 4) acknowledges that *Wang et al.* “does not disclose the packets conform with Ethernet V2 format.” Applicants’ study of *Gidwani* also reveals such a void. Undeterred by the lack of facts, the Office Action simply concludes “it would have been obvious to one of ordinary skill in the art to transmit packet data from PC user of *Wang et al.* using V2 Ethernet packet to support PPP over Ethernet LAN users.” To the extent that the Examiner is taking Official Notice, pursuant to the MPEP § 2144.03, Applicants respectfully traverse the Official Notice and request the Examiner to produce references showing the claim features or withdraw the rejection as factually inadequate.

Therefore, the present application, as amended, overcomes the rejection of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 425-8508 so that such issues may be resolved as expeditiously as possible.



8/17/04

Date

Respectfully Submitted,

DITTHAVONG & CARLSON, P.C.

A handwritten signature in black ink, appearing to read "P. Dithavong".

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